

**Reclamation Board Meeting
October 19, 2007**

**Staff Report
33 USC Section 408 Action
Reclamation District 2126
Encroachment Application No. 18257
Bear Creek, Atlas Tract, San Joaquin County**

Item

Consider sending a letter (Attachment A) to the Sacramento District, U.S. Army Corps of Engineers (Corps), requesting 33 USC Section 408 approval to alter approximately 4,000 linear feet of the federal Bear Creek Flood Control Project levee located between Bear Creek and Mosher Slough in San Joaquin County north of the City of Stockton by relocating the alignment of the existing project levee approximately 40 feet to the west to allow extension of a county roadway (Trinity Parkway) to provide for the future residential development of Atlas Tract, Reclamation 2126. The federal project levee proposed to be relocated forms the eastern boundary of Atlas Tract, a currently undeveloped area.

Applicant

Reclamation District 2126, 10100 Trinity Parkway, 5th Floor, Stockton, California 95219

Location

The proposed levee alteration is located in San Joaquin County just west of Interstate 5 between Bear Creek and Mosher Slough. Figures 1 and 2 provide location overview and detail maps. Figure 3 shows a section of the Bear Creek Project, Figure 4 highlights the federal project levees, and Figure 5 the local or nonfederal project levees. Figure 6 provides a satellite aerial view of the project vicinity including the existing levee, and other current and proposed features. Figures 7 through 10 are photographic views of the project levee, existing features, and proposed Trinity Parkway alignment.

The levee reach of interest is a wing levee of the federally authorized Bear Creek Project that is connected to the western end of the left bank (southern) levee along Bear Creek. All other levees bordering Atlas and the adjoining tracts (Bishop and Shima) are local nonfederal project levees. Atlas Tract lies within the statutory limits of the Delta Secondary Zone (1992 Delta Protection Act) with elevations ranging from sea level to minus 10 feet. Atlas Tract is bordered by Bishop Tract (Reclamation District 2042) to

the north of Disappointment Slough (the downstream extension of Bear Creek) and Shima Tract (Reclamation District 2115) to the west and south across Mosher Slough.

Atlas Tract lies within the 11th Congressional, 5th State Senate, and 17th State Assembly districts.

Project Description

The applicant is proposing to relocate approximately 4,000 linear feet of the existing project levee, the reach between Bear Creek and Mosher Slough, approximately 40 feet westward of the present location. Construction will involve degrading the existing levee and placing engineered fill to construct a new, relocated levee.

Relocating the existing project levee is required in order to be able to extend Trinity Parkway south of Bear Creek. The proposed future parkway extension will be located parallel to and adjacent to the east side of the proposed levee relocation.

A new easement is proposed to be recorded in the name of the Sacramento San Joaquin Drainage District (SSJDD) that would include the new levee footprint and associated access and maintenance areas. The existing SSJDD easement would then be quitclaimed.

In addition to relocating the existing project levee, the applicant is proposing to install new utility lines within the area to be defined by the new, proposed levee easement.

The proposed parkway extension project will be implemented in two phases. The first phase would include realignment of the federal project levee and installation of utility lines. The second phase would include construction of the parkway from Bear Creek to Mosher Slough, construction of an interchange on Interstate 5 at Otto Drive, and extension of Otto Drive westward across Trinity Parkway and the federal project levee into Atlas Tract to provide for future residential development.

Local Agency Endorsement

The local levee maintaining agency is the San Joaquin County Flood Control and Water Conservation District (District). The District provided a letter of endorsement to the Board on October 4, 2007 that included the following conditions:

- The Permittee (RD 2126) shall be responsible for any damage to Bear Creek and Mosher Slough and its levees that may occur as a result of the project.

- The District shall not be responsible for any damage to the facilities due to the District's operation and maintenance of the project levee.
- No construction of any kind shall be allowed in Bear Creek and Mosher Slough between November 1st and April 15th without the permission of the State Reclamation Board and the District.

Need for Board Action

Since the proposed project will alter a federal flood control project by relocating an existing federal project levee, Corps approval under 33 USC Section 408 is required prior to proceeding with the project.

Staff Recommendation

Staff recommends the Board **not send** a letter to the Corps requesting 33 USC Section 408 approval to alter the federal flood control project levee for the following reasons:

1. Atlas Tract is located within the Sacramento-San Joaquin Delta and is a naturally occurring floodplain area with land elevations that range from sea level to 10 feet below sea level. The area is protected by nonfederal project levees on the north, south, and west sides. The area is prone to flooding and would flood naturally without the protection provided by the existing local nonfederal levees. The 1992 Delta Protection Act placed Atlas Tract within the "Secondary Zone" of the Delta, which may be developed and is subject to the land use authority of local government.
2. The alteration of a federal levee and construction of access roadways parallel to and over the federal levee to allow future residential development to occur in an undeveloped area appears to be inconsistent with floodplain management objectives stated in both Federal Executive Order 11988 (Attachment B) and State Executive Order B-39-77 (Attachment C).
3. Federal Executive Order 11988 directs federal agencies to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health, and welfare, and to restore and preserve the natural and beneficial values served by floodplains. Approval by the Corps under 33 USC Section 408 to alter a project levee that would support the future residential development of Atlas Tract appears to be in conflict with this order.
4. Approval by a State agency also appears to be in conflict with a similar State directive, Executive Order B-39-77 that states:

- “...throughout the state the magnitude of annual flood caused property losses and threats to human safety is increasing, largely as a result of unwise use and continuing development of the state’s floodplains and despite substantial efforts to control floods;...”
 - “...state agencies need to be more cognizant of long and short term flood risk and losses associated with occupancy of floodplains and more consistent in the evaluation of flood hazards in implementing their programs;...”
5. There appear to be no tangible flood control benefits to the State or federal plans of flood control by approving the construction and realignment of this federal project levee reach. The Department of Water Resources 2006 Inspection Report of the Flood Control Project Maintenance and Repair (published August 2007) lists the Bear Creek Project as “satisfactory” and shows the previous 9 years (1997-2005) as being “compliant”, the rating equivalent to “satisfactory” that was used prior to 2006. Reclamation District 2126, Atlas Tract, is also not on the Corps’ list of 28 maintenance deficient levees that were required to submit corrective action plans. Although the investigation of urban levees is currently ongoing, there is no evidence at this time that indicates this levee reach is structurally deficient. In summary, there appears to be no State or federal reason to relocate this levee reach.

Potential Board Action

If the Board approves sending a 33 USC Section 408 request letter to the Corps, staff recommends that:

1. The Board find the proposed alteration is in the best interest of the State and does not have a negative impact on the State plan of flood control.
2. The levee project to be recommended to the Corps be located further west than proposed so there will not be future conflicts between County infrastructure (parkway, utilities, etc.) and the federal flood control project, State’s plan of flood control, and the future easement to be acquired by the Board for this part of the State plan of flood control.
3. The levee project to be recommended have 50-foot wide areas adjacent to both the landside and waterside levee toes to prevent problems with future urban encroachments and to allow for implementation of future flood control improvements such as widening or raising of the levee.

4. The work associated with the extension of Otto Drive be considered under a separate application as Reclamation District 2126 will not be the public entity responsible for the street.

List of Attachments

- A. Draft 33 USC Section 408 Request Letter
- B. Federal Executive Order 11988
- C. State Executive Order B-39-77

Figure 1 – Location Overview Map

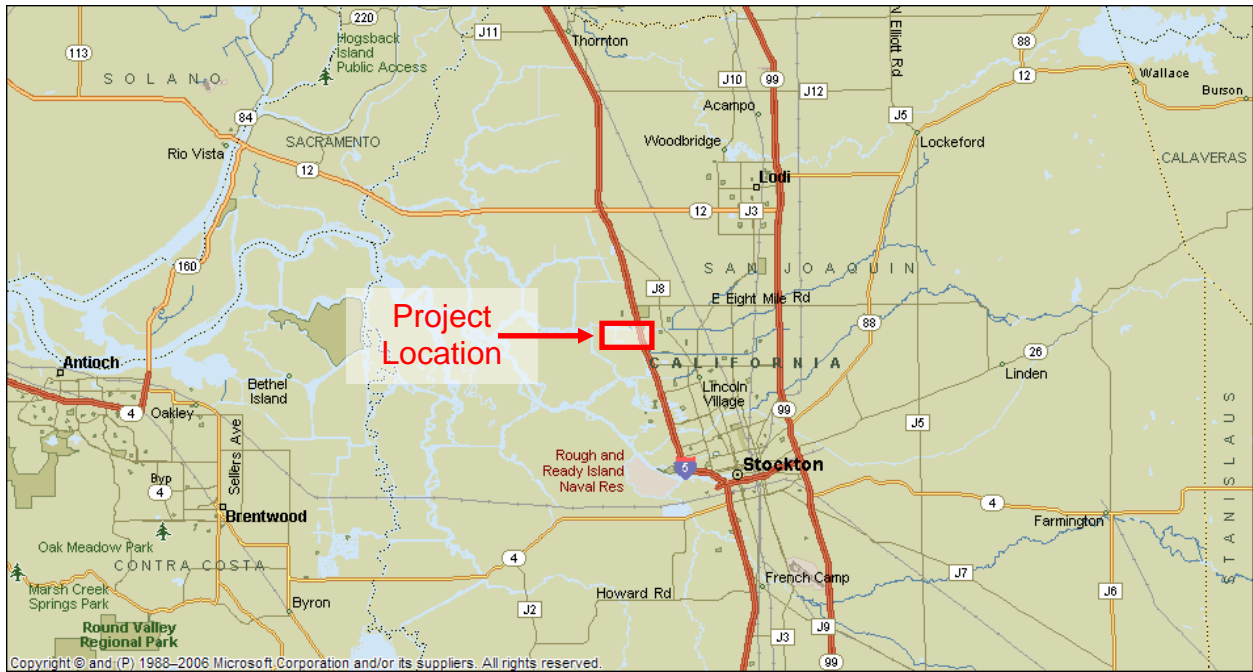


Figure 2 – Location Detail Map



Figure 3 – Bear Creek Project Detail

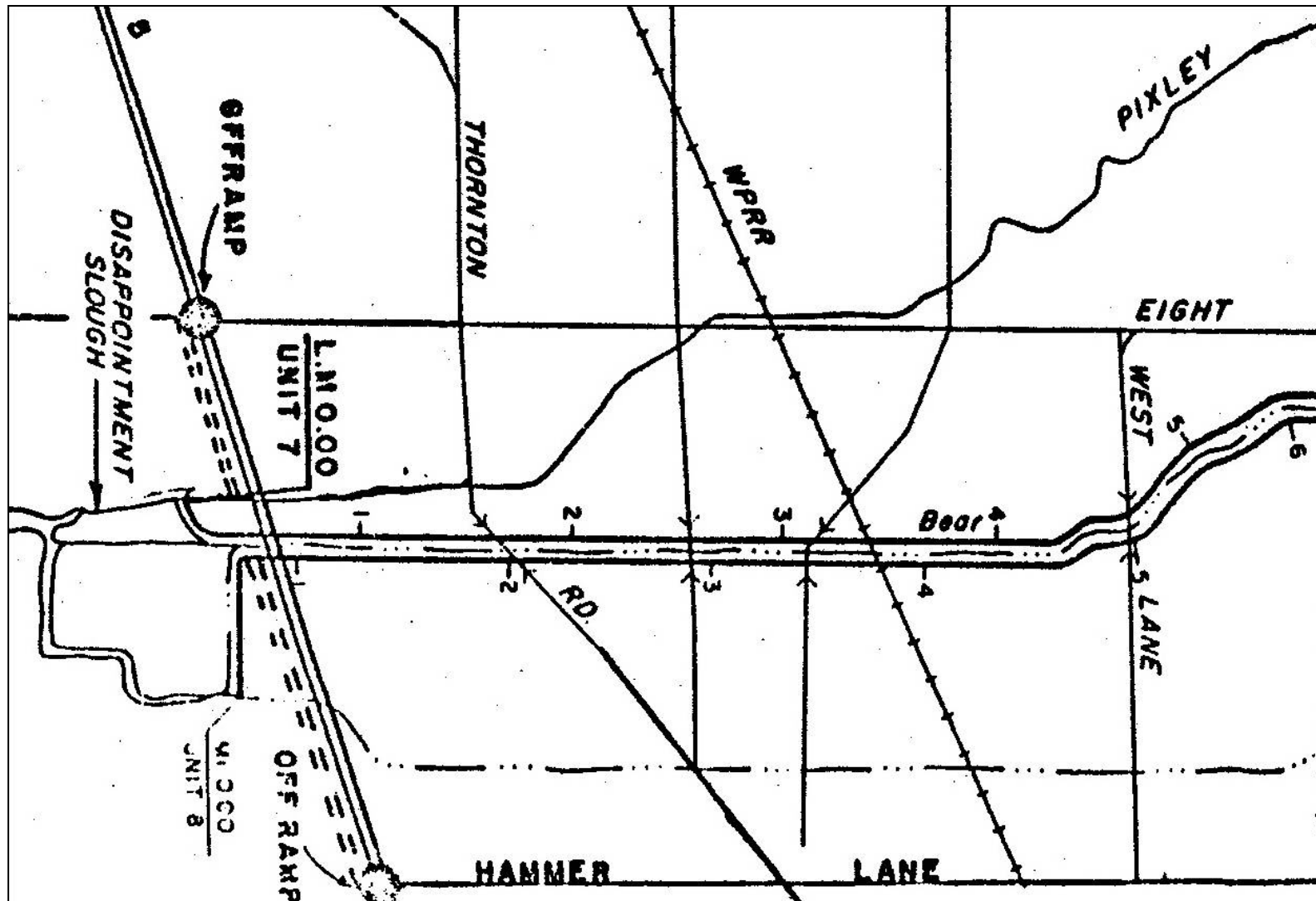


Figure 4 – Federal Project Levees

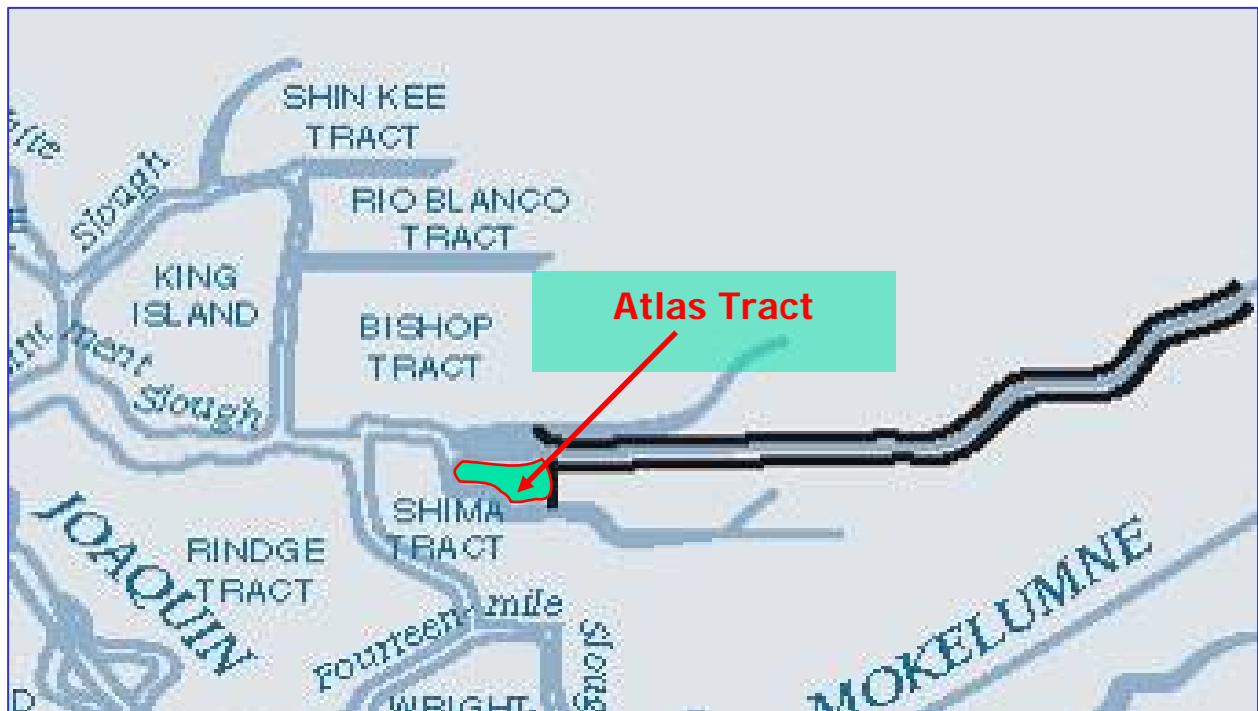


Figure 5 –Local Non-project Levees

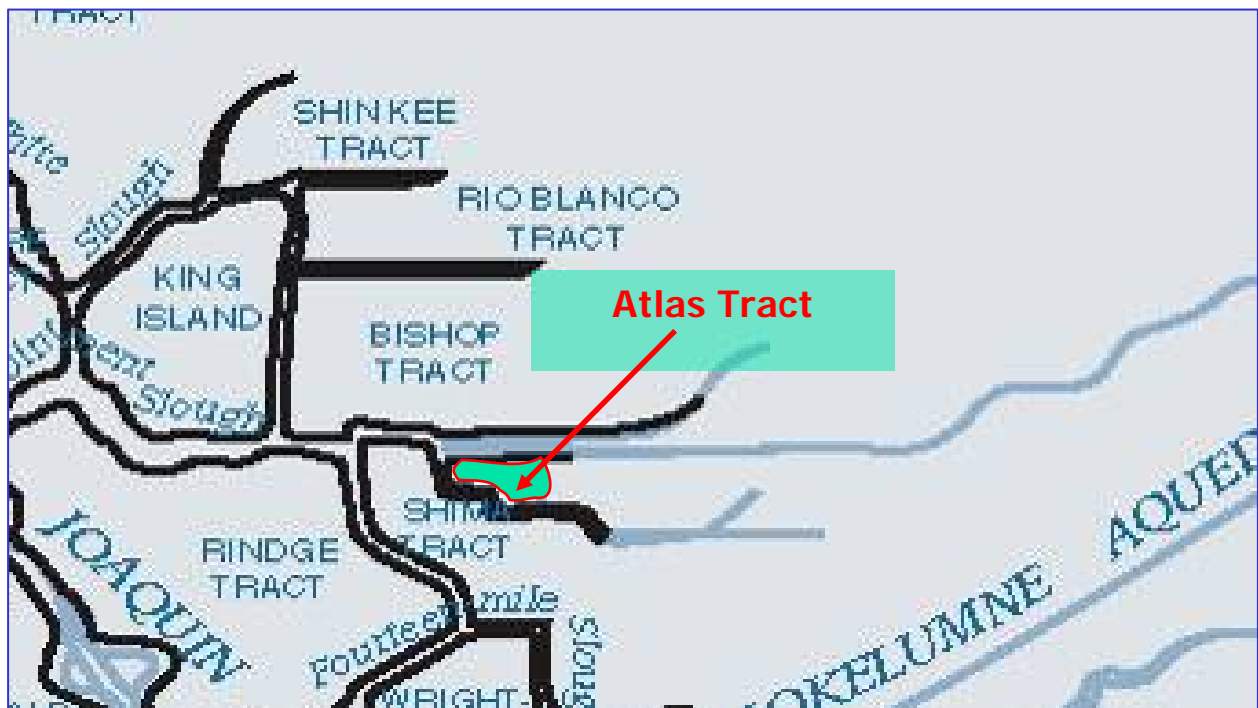


Figure 6 – Photo Map with Project Features

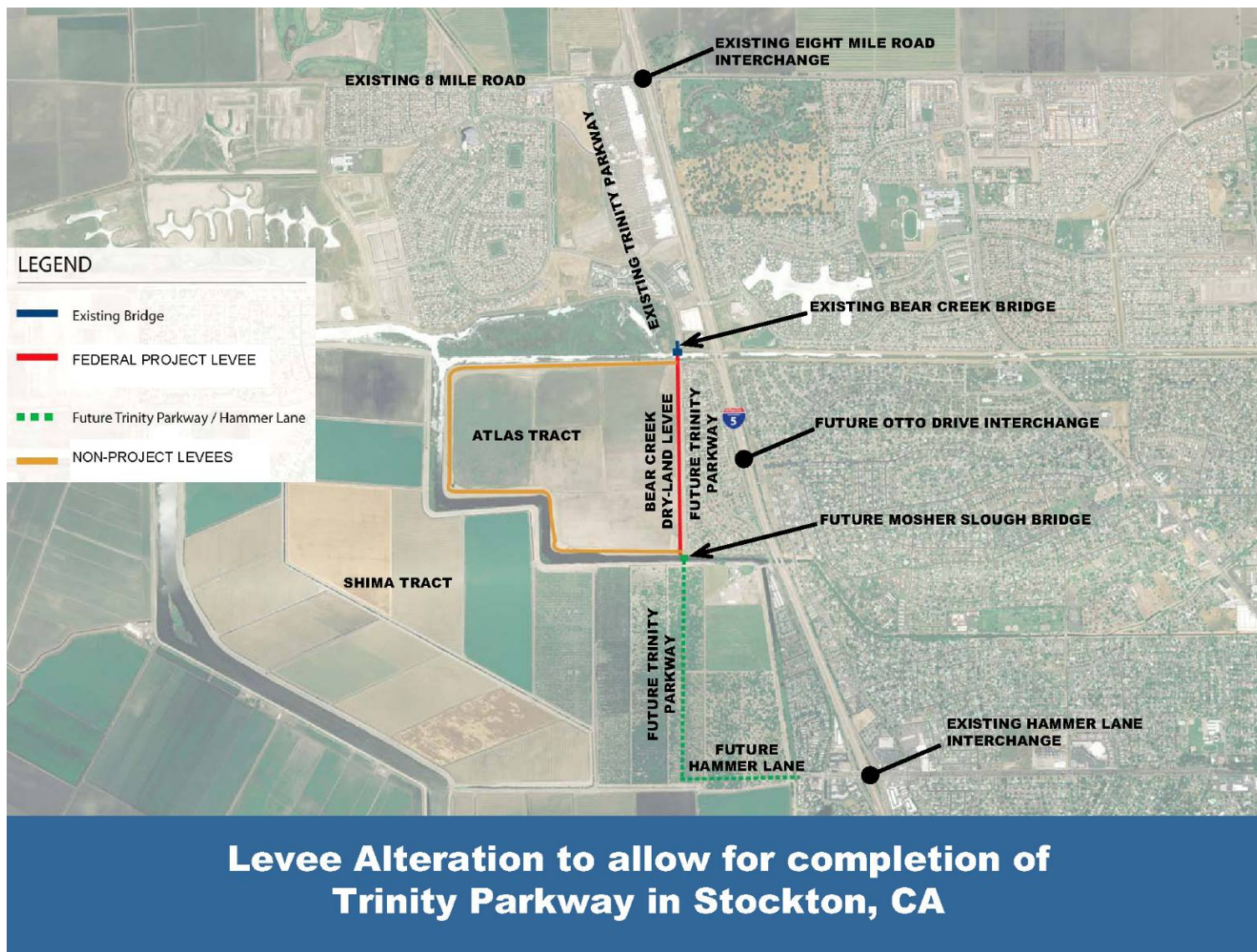


Figure 7 – Southern View with Atlas Tract to the right



Figure 8 – Southern View from Bear Creek Bridge



Figure 9 – Southern View Close Up

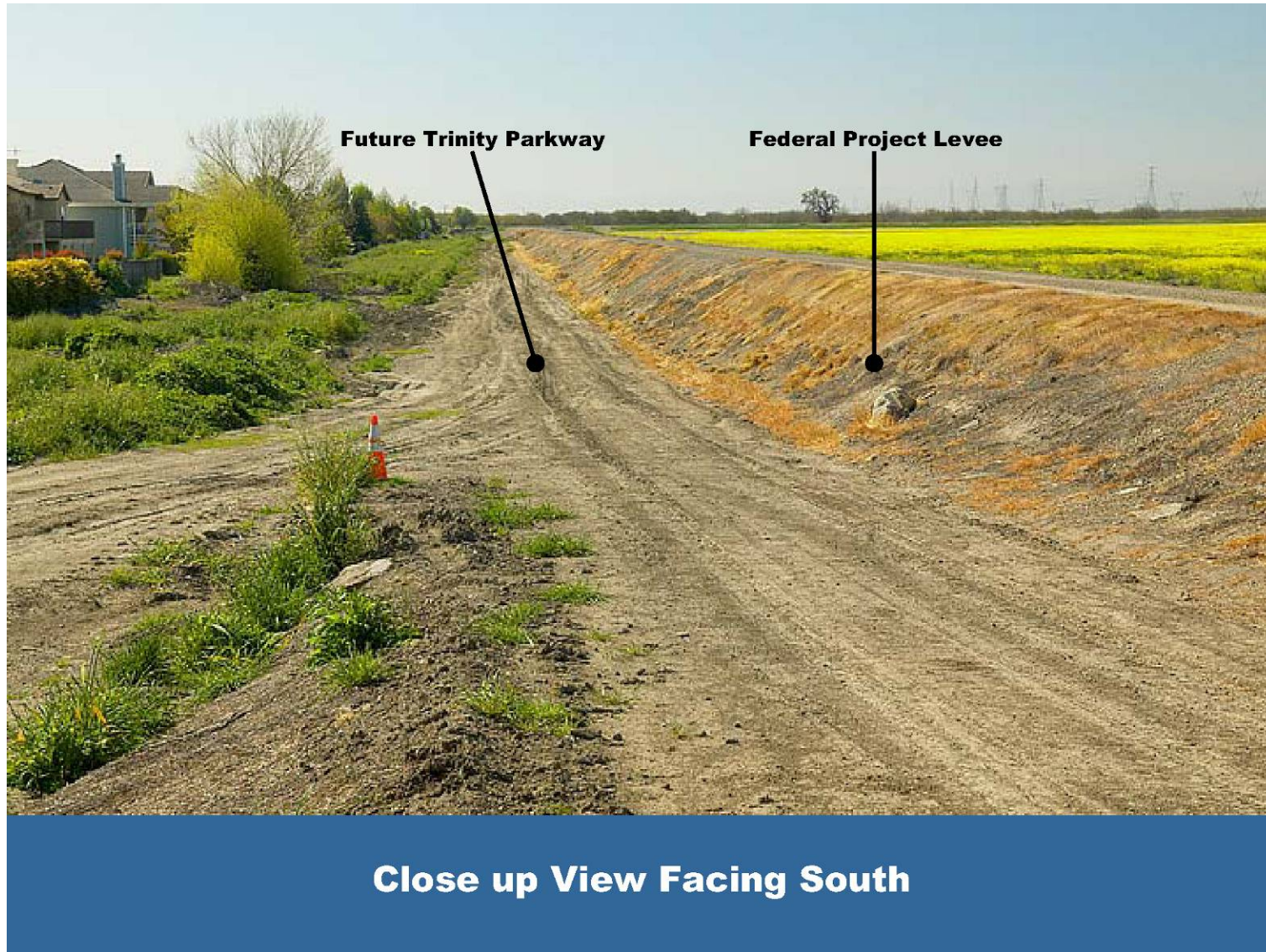


Figure 10 – Northern View



Attachment A

Draft 33 USC Section 408 Request Letter

THE RECLAMATION BOARD

3310 El Camino Ave., Rm. LL40
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0682
PERMITS: (916) 574-0653 FAX: (916) 574-0682



October 19, 2007

Colonel Thomas C. Chapman, District Engineer
U.S. Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, California 95814

Dear Colonel Chapman:

The California Reclamation Board (Board) is requesting approval by the U.S. Army Corps of Engineers (Corps) under 33 U.S.C. 408, on behalf of Reclamation District 2126 (RD), to alter a portion of the San Joaquin River Flood Control Project. The Board has determined the proposed alteration will not have a detrimental effect on the San Joaquin River Flood Control Project. Board permit application No. 18257 including project description, construction specifications, and levee alteration plans has been delivered to Mr. James Sander, Chief, Operations Technical Division, Sacramento District.

If the Corps approves the proposed alteration the Board will proceed with its permitting process. If a permit is granted, the project has been completed, and the alteration has been formally incorporated within the federal project by the Corps, the State of California, acting through the Board, will accept the altered project for operation and maintenance and hold and save the United States free from damage due to the construction works.

Within 90 days of completion of the project alteration, the Board will provide information to the Corps for the purposes of preparing a revised Operation and Maintenance Manual for this portion of the SJRFCP, and as-built Plans and Specifications for the alteration.

The RD proposes to begin construction in April 2008 and to complete work prior to the 2008-2009 flood season. To facilitate this schedule the Board requests that Corps' review be completed no later than February 1, 2008.

If you have any questions or need further information, please contact me at (916) 574-0609, or your staff may contact Stephen Bradley, the Board's Chief Engineer, at (916) 574-0608.

Colonel Thomas C. Chapman
October 19, 2007
Page 2

Sincerely,

Benjamin F. Carter, President
The Reclamation Board

Maureen "Lady Bug" Doherty, Secretary
The Reclamation Board

Approved as to Legal Form and Sufficiency

Scott Morgan
Counsel for The Reclamation Board

cc: Mr. Richard Reinhardt, PE
MBK Engineers
2450 Alhambra Boulevard, 2nd Floor
Sacramento, California 95817-1125

Reclamation District 2126
10100 Trinity Parkway, 5th Floor
Stockton, California 95219

Attachment B

Federal Executive Order 11988



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EXECUTIVE ORDER No. 11988

May 24, 1977, 42 F.R. 26951

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America. in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the [Flood Disaster Protection Act of 1973](#) [EXIT Disclaimer](#) (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1.

Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Section 2.

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)

(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain--for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102 (2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain,

consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the [National Environmental Policy Act of 1969](#) EXIT Disclaimer, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Federal Insurance Administration, and the Council on Environmental Quality, and shall update such procedures as necessary.

Section 3.

In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an

identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference .in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Section 4.

In addition to any responsibilities under this Order and Sections 202 and 205 of the [Flood Disaster Protection Act of 1973](#) EXIT Disclaimer, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Section 5.

The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Section 6.

As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Section 7.

Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Section 8.

Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Section 9.

To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104 (h) of the Housing and Community Development Act of 1974. as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be

assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the [National Environmental Policy Act of 1969](#) [EXIT Disclaimer](#), as amended.

JIMMY CARTER, THE WHITE HOUSE, May 24, 1977.

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Last updated on Wednesday, February 22nd, 2006
URL: <http://www.epa.gov/owow/wetlands/regs/eo11988.html>

Attachment C

**State of California
Executive Order B-39-77**

EXECUTIVE ORDER B-39-77

Executive Department State of California

EXECUTIVE ORDER B-39-77

WHEREAS, throughout the state the magnitude of annual flood caused property losses and threats to human safety is increasing, largely as the result of unwise use and continuing development of the state's floodplains and despite substantial efforts to control floods; and

WHEREAS, state government has programs for the construction of facilities and annually disposes of state lands in flood hazard areas; and

WHEREAS, the purchase of flood insurance is a condition of any federal financial assistance for any state or local government in the location, construction, or acquisition of property in identified flood-hazard areas; and

WHEREAS, the availability of state financial assistance is often a determining factor in the use of land and the location and construction of public and private facilities; and

WHEREAS, state agencies need to be more cognizant of long and short term flood risk and losses associated with occupancy of floodplains and more consistent in the evaluation of flood hazards in implementing their programs; and

WHEREAS, significant new legislation has been enacted including at the state level the Cobey-Alquist Flood Plain Management Act of 1965, and at the federal level the Flood Disaster Protection Act of 1973, and others, and the state is supportive of the federal acts and desires to provide leadership in management of natural resources, including floodplains; and

WHEREAS, similar action has been taken at the national level affecting federal construction and at the state level by other states;

NOW, THEREFORE, I, Edmund G. Brown Jr., Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. The heads of all state agencies shall provide leadership in efforts to minimize the risk of flood losses in connection with state lands and installations and state financed, insured, or assisted improvements. The heads of such agencies shall take particular care to avoid unwise or hazardous use of floodplains in connection with all activities under their authority. Specifically:
 - a. All agencies responsible for the construction of state facilities shall, in writing, evaluate flood hazards when planning the location of new facilities. The evaluation shall consist of a determination of whether the proposed site lies in a flood hazard area and, if so, what precautions have been taken to minimize the hazard. If the facility does not have to be in the floodplain to serve an essential purpose and the proposed site lies within an identified flood hazard area, all feasible alternative locations for siting outside of the flood-prone area shall be given consideration. New structures proposed in floodplains must be constructed and maintained in accordance with the design and floodway standards set forth in the Code of Federal

Regulations (24 CFR, Parts 1910.3, 1910.4 and 1910.5). Where the flood hazard area has not been delineated by the federal government, the agency should contact the Department of Water Resources for assistance in evaluating the hazards in the area.

b. With respect to existing state-owned buildings which have previously suffered flood damage or are in an identified flood hazard area, the agencies shall require analysis of past and probable flood heights. In the case of the reconstruction, rehabilitation, or addition to existing publicly used state structures, such activities shall be carried out in accordance with the design and floodway standards set forth in the Code of Federal Regulations. Whenever practical and appropriate, floodproofing measures shall be applied to existing structures in identified flood hazard areas.

c. All agencies responsible for the administration of any form of direct or indirect state assistance involving construction or acquisition of any state facilities shall assure that the evaluation and mitigation of flood hazards in connection with such facilities is carried out in the manner specified in this Executive Order.

d. All agencies responsible for the disposal of state lands or properties shall evaluate and mitigate flood hazards. When lands or properties proposed for disposal are found to be susceptible to specified flooding hazards, the state agency shall obtain assurances that proposed uses are appropriate under the provisions of the Cobey-Alquist Flood Plain Management Act.

e. All agencies responsible for programs which affect land use planning, including state permit programs, shall take flood hazards into account in accordance with recognized floodway and 100-year frequency flood design standards when evaluating plans and shall encourage land use appropriate to the degree of hazard involved.

2. Technical evaluations of flood hazard can be obtained from the U.S. Army Corps of Engineers and the U.S. Department of Housing and Urban Development (update note: now the Federal Emergency Management Agency). The California Department of Water Resources is hereby designated to coordinate requests for flood hazard information from the U.S. Army Corps of Engineers and other governmental agencies.

3. Assistance in compliance with this order is available through the Department of Water Resources.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the great seal of the State of California to be affixed this 26th day of November, nineteen hundred and seventy-seven.

(Great Seal)
of
(California)

/s/ Edmund G. Brown Jr.
Governor of California

ATTEST:
/s/ March Fong Eu
Secretary of State